

EACH OF THE PARTIES AFFIRMS THAT IT UNDERSTANDS THE TERMS AND CONDITIONS SET FORTH BELOW, INCLUDING THE STATED EXCLUSIONS OF WARRANTIES AND LIMITATIONS OF REMEDIES, AND ACKNOWLEDGES THAT THESE TERMS AND CONDITIONS CONSTITUTE AN AGREED ALLOCATION OF RISK THAT IS REFLECTED IN THE PRICES. CUSTOMER CONFIRMS THAT BY SUBMITTING A PURCHASE ORDER FOR THE PRODUCTS AND/OR SERVICES IDENTIFIED IN SUPPLIER'S QUOTATION (OR A SUBSET THEREOF) THE CUSTOMER ACCEPTS THESE QUOTATION TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS AND SERVICES (THIS "**AGREEMENT**") AS THE CONTRACTUAL TERMS GOVERNING THE TRANSACTION.

These terms and conditions apply where:

- (A) Supplier provides a written quotation to a Distributor in respect of certain Products and Services to be supplied by Supplier to the Distributor to supply to a Reseller or an End User and the Distributor submits a Purchase Order to Supplier for the Products and Services identified on Supplier's written quotation, or
- (B) Supplier provides a written quotation to a Reseller in respect of certain Products and Services to be supplied by Supplier to the Reseller to supply to an End User and the Reseller submits a Purchase Order to Supplier for the Products and Services identified on Supplier's written quotation, or
- (C) Supplier provides a written quotation to the End User in respect of certain Products (licenses in the case of Software) and Services to be supplied by Supplier to the End User and the End User submits a Purchase Order to Supplier for the Products and Services identified on Supplier's written quotation.

The terms and conditions contained in this Agreement constitute the entire agreement between Supplier and Customer, in respect of the Products and Services identified in the Supplier's quotation to which these terms relate. Supplier will not be bound by any terms of a Purchase Order that are inconsistent with the terms contained herein. Each Purchase Order is subject to acceptance in writing by Supplier.

1. Interpretation.

1.1 Definitions. As used herein, including in any URL or other document referenced herein, the following terms are defined as indicated:

- a. "**Affiliates**" means, with respect to an entity, any other person or entity that now or in the future, directly or indirectly controls, is controlled with or by or is under common control with a party. For purposes of the foregoing, "**control**" shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or other ownership interest, by contract or otherwise).

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- b. **“Business Day”** means a weekday between Monday and Friday but shall not include a day designated as a holiday at the location of the applicable Supplier or Affiliate offices, including provincial holidays in Ontario, California and Delaware and/or national holidays in Canada, the United States of America and England.
- c. **“Change of Control”** means any of the following: (i) the sale of all or substantially all the assets of Customer; (ii) any merger, consolidation or acquisition of Customer with, by, or into another corporation, entity, or person; (iii) any change in the ownership of more than fifty percent (50%) of the voting capital stock of Customer in one or more related transactions; or (iv) any other change in the control (as defined in Section 1.1.a.) of the Customer.
- d. **“Cloud Software”** means Software identified in writing by Supplier as being Cloud Software and currently includes but is not limited to the following Supplier Cloud Services Policy Controller software offerings: (i) Sandvine View™; (ii) Sandvine Control™, and (iii) Sandvine Protect™.
- e. **“Customer”** means the entity named on the quotation and/or Order, which is either: (i) an End User; (ii) a Reseller; or (iii) a Distributor.
- f. **“Deliverable”** means any Software Modules (including any Custom Software Modules provided for an End User) and the outputs of Professional Services, software scripts, documentation and/or other materials to be developed or prepared by Supplier for Customer as described in the SOW. Deliverables exclude Third Party Items.
- g. **“Device”** means: (i) a Hardware unit, or (ii) a third party device, hardware or network element (which, for clarity, is a Third Party Item).
- h. **“Distributor”** means a third party distributor who has entered into a distribution agreement with Sandvine and pursuant to which is duly authorized to distribute the Products and Services to End Users via resellers in a specified territory.
- i. **“Documentation”** means: (i) all marketing, sales, instructions, manuals, Training Materials, technical literature and other written materials, including revisions thereto, for the promotion, sale, use and maintenance of the Products as provided by Supplier under this Agreement; and (ii) the electronic, printed, or other form of documents that accompany or are otherwise available to provide information about installation, operation, and use of the Product (including, but not limited to, relating to Software Modules and any standard services or custom services). Documentation excludes Third Party Items.
- j. **“End User”** means the company(ies) to which Supplier, or a Reseller or Distributor, sells the Products and/or Services in accordance with the terms of this Agreement.

- k. **“End User IP”** has the meaning given to such term in Section 9.b.i. For clarity, Deliverables, Software Modules (including any Custom Software Modules provided for the End User) and the outputs of Standard Services or Custom Services are not End User IP.
- l. **“End User License Agreement”** means the terms and conditions applicable to the Software as specified at: <https://www.sandvine.com/hubfs/downloads/contracts/eu-software-license.pdf>.
- m. **“End User Support Terms”** means Supplier’s then-current terms and conditions which can be found at www.sandvine.com/legal and applicable to the tier of Support and Maintenance Services specified in Supplier’s quotation.
- n. **“General Availability”** means the date a version of Software was first made available to be licensed by Supplier’s customers.
- o. **“Hardware”** means tangible, physical Supplier-produced hardware equipment as may be Ordered by Customer and delivered by Supplier under this Agreement. Hardware excludes Software, Documentation and Third Party Items.
- p. **“Intellectual Property Rights”** includes any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing: (i) rights associated with works of authorship throughout the universe including, but not limited to, copyrights, moral rights, and mask works, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property and proprietary rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license or otherwise, and (vi) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force globally (including without limitation rights in any of the foregoing).
- q. **“LTS Release”** means a long term support (“LTS”) release of Software which will be eligible for Support and Maintenance Services for two (2) years from General Availability and will be supported by Supplier during this two (2) year period. LTS Releases such as software version XX.YY are designated by a major release number (XX) and a minor release number (YY).
- r. **“Maintenance Release”** is an interim Release version of any Software for which Supplier does not generally charge end users provided the Software is covered by the End User’s purchase of Support and Maintenance Services.
- s. **“Order”** means an order for Products or Services made in accordance with the terms and conditions of this Agreement pursuant to a Purchase Order which incorporates the terms of this Agreement and, in the case of Services, a SOW. Orders for Products and/or

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Services are Purchase Orders that are accepted by the Supplier entity named on Supplier's quotation.

- t. **"Portal"** means Supplier's support portal located at: <https://support.sandvine.com>. The location, availability and functionality of the Portal is subject to change from time to time at Supplier's sole discretion. The Portal may include: (i) access to Software Releases, Documentation, knowledge-base articles and order tracking information; (ii) the ability to enter support tickets; (iii) notifications and information updates from Supplier; and (iv) the ability to request training and access.
- u. **"Products"** means the Hardware, Software and/or Documentation that may be purchased or licensed from Supplier in accordance with this Agreement. The Products, and the pricing and warranty terms for Products, may be updated from time to time by Supplier in its sole discretion.
- v. **"Professional Services"** means professional services provided by Supplier pursuant to the terms and conditions of this Agreement or SOW (as applicable) and which may include: (i) installation, configuration and commissioning of Products either remotely or on End User's premises; and (ii) training on the use and operation of Products and Services. Professional Services may be:
 - (a) standardized service offerings as may be made generally available by Supplier from time to time to Supplier's customers (**"Standard Services"**), whereby Standard Services are provided by Supplier pursuant to this Agreement and a SOW; or
 - (b) non-standard services, which may include customized or bespoke services (such as development, customization, modification, installation, configuration or other services) undertaken for an End User at the End User's request and which services are not generally made available by Supplier to its customers as a Standard Service (**"Custom Services"**), whereby Custom Services are provided by Supplier pursuant to this Agreement and a SOW.For clarity, the outputs of Standard Services or Custom Services are not End User IP.
- w. **"Purchase Order"** means a written order issued by Customer to Supplier which is subject to the terms and conditions of this Agreement.
- x. **"Release"** means a commercially available version of Software.
- y. **"Reseller"** means a Supplier-approved entity named on the quotation and/or Purchase Order that purchases Products and Services from Supplier, and markets and sells the Products and Services to End Users under the terms and conditions of this Agreement.
- z. **"Services"** means Professional Services and Support and Maintenance Services provided in accordance with the terms and conditions of this Agreement or SOWs (as applicable).

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- aa. **“Software”** means Supplier proprietary software including, without limitation, server software, client software, Software Modules and Cloud Software. Software includes updates and upgrades if any are provided to End User by Supplier. No source code shall be provided hereunder. Software excludes any Third Party Items.
- bb. **“Software Module”** means either:
- i. a standard Software module as may be made generally available by Supplier from time to time to Supplier’s customers (**“Standard Software Module”**), whereby any Standard Services associated with a Standard Software Module will be provided by Supplier pursuant to this Agreement and a SOW; or
 - ii. a non-standard Software module, which may include a customized or bespoke Software module (which may include the customization or modification of a Standard Software Module) to achieve certain desired functionality in an End User’s network that is not made generally available by Supplier to its customers (**“Custom Software Module”**), whereby any Custom Services associated with a Custom Software Module will be provided by Supplier pursuant to this Agreement and a SOW.

For clarity, Software Modules (including Custom Software Modules provided for the End User) are not End User IP.

- cc. **“SOW”** means a written statement of work agreed upon and executed by the parties.
- dd. **“Specifications”** means:
- (i) with respect to Products, the manuals, user guides and other documents made generally available with the Products that define the features, operating conditions and other key characteristics of the Products;
 - (ii) with respect to Services, the specifications for the Deliverables agreed upon by Supplier and set forth in the applicable SOW, as such may be amended from time to time with the agreement of Supplier; and
 - (iii) with respect to Software, the manuals, user guides and other documents made generally available with the Software that define in a complete and verifiable manner the features, operating conditions and other key characteristics of the Software.
- ee. **“Subscription Term”** means the period of time that Subscription Software is licensed for use by the End User.
- ff. **“Subscription Software”** means Software which is licensed by Supplier on a subscription basis.

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- gg. **“Supplier”** means the Supplier entity named on the Supplier’s quotation, which will be either Sandvine Corporation or an Affiliate of Sandvine Corporation.
- hh. **“Support and Maintenance Services”** means the support and maintenance services as identified in the Support Plan and subject to the End User Support Terms.
- ii. **“Support Plan”** means the terms and conditions applicable to the provision of Support and Maintenance Services for the End User, based on the level of Support and Maintenance Services ordered by the End User and the allocation of the Support and Maintenance Services responsibilities between: (i) Distributor and/or Reseller, as applicable; and (ii) Supplier. The allocation of Support and Maintenance Services responsibilities as between Distributor and/or Reseller and Supplier shall be as set out in the applicable Support Plan. Where a Reseller is involved in the provision of Support and Maintenance Services, the Distributor shall be responsible for the performance of the Reseller and the Reseller’s compliance with the requirements set out in the Support Plan. The Support Plan will be provided to Distributor by Supplier from time to time and it may be published by Supplier on the Portal or at www.sandvine.com/legal.
- jj. **“Supported Release”** means a Supplier Software version that, according to Supplier’s end of life policy, has not reached end of life status or been made obsolete by the General Availability of a Software product.
- kk. **“Third Party Items”** means Distributor, Reseller, End User, other third party suppliers and licensors or another third party: (i) software or software applications; (ii) content of any type; (iii) services including, without limitation, internet connectivity, systems, airtime services, wireless networks, network bandwidth, network connection and quality, and non-Supplier websites; and (iv) devices, network elements, servers, equipment, disk space, memory, central processing units, and other hardware products.
- ll. **“Training Materials”** means materials and documentation made available by Supplier as part of its training courses described in Section 7 (Training).

1.2 Interpretation Provisions. In this Agreement: (a) capitalized terms shall have the meanings as defined in Section 1.1 (Definitions) or as otherwise defined in this Agreement; (b) section headings are provided for convenience only and if any conflict of interpretation arises between a section heading and the text of the section, the text shall prevail; (c) all references to “Agreement” include these terms and conditions, any schedules, attachments, exhibits or documents attached to or referenced in or by these terms and conditions and any Orders and SOWs; (d) unless the context requires otherwise, the singular will include the plural and vice versa; (e) “for example”, “includes” and “including” are not limiting; (f) “all” includes “any” and “any” includes “all”; and (g) references to “days” means calendar days unless stated otherwise. Section 12.b. (Entire Agreement; Governing Terms) sets out how any conflicts that arise between these terms and conditions and a schedule,

attachment, exhibit or document attached to or referenced in or by these terms and conditions shall be determined.

2. General Obligations of Resellers/Distributors. This section is only applicable to Resellers and Distributors.

2.1 Staffing. Resellers and Distributors shall:

- (a) complete and comply with obligations under this Agreement applicable to Resellers or Distributors (including ensuring the prompt handling of enquiries, orders, shipments, and support for the Products and Services within the Territory, consistent with its responsibilities under the Support Plan and this Agreement):
 - i. maintain adequate facilities, and
 - ii. assign, train and maintain a work force of qualified staff of sufficient size and reasonably necessary skills,
- (b) arrange for staff to attend sales, technical and support training conducted by Supplier either remotely or at Reseller's or Distributor's office,
- (c) arrange for technical staff, at Reseller's or Distributor's expense, to attend technical training conducted by Supplier at Supplier's headquarters (or make other mutually agreeable arrangements for technical training),
- (d) assign designated contacts that will serve as the specialists for sale of Supplier Products, support, technical expertise and executive engagement, and
- (e) be solely responsible for the installation, maintenance, repair, and replacement of Products and Services with End Users.

2.2 Business Conduct. Resellers and Distributors shall: (a) responsibly and actively promote, market and sell Products and Services in the Territory in a way that reflects favorably on the reputation of both Supplier, Products and Services, (b) engage in truthful, ethical practices in promoting, marketing and selling the Products and Services and shall only make true and accurate representations regarding the function and performance of Products and Services that are consistent with the most current version of Supplier's printed Product and Services documentation, (c) not make any false, misleading or disparaging representations or statements regarding Supplier or Supplier's Affiliates, Products or Services, including specifications, features, warranties, or disclaimers that are not consistent with Supplier's printed Product and Services documentation, (d) comply with all applicable laws, including international, national, regional and local laws, statutes, directives (UN, EU or otherwise) and regulations, including without limitation, the US Foreign Corrupt Practices Act, UK Bribery Act, OECD Convention of Combating Bribery of Foreign Public Officials in International Transactions and any other applicable legislation enacted to enforce or implement any international convention prohibiting bribery and corruption; and (e) comply with Supplier's Code of Business Conduct which is available for download at: <https://www.sandvine.com/hubfs/downloads/contracts/code-of-conduct.pdf>; and

Customer acknowledges, understands, and agrees that:

- i. Measures taken by or on behalf of End Users to restrict access to the Internet, at the direction of governments or otherwise, must be exceptional, grounded in law, strictly necessary, limited in scope and duration, communicated and explained transparently, and proportional to a legitimate and lawful government aim. The denial of users' individual rights, including online, should be supported by legitimate, compelling, and substantiated reasons, not merely by vague and unspecified claims of national security or by unsubstantiated claims for the need to use police power for the purported safety of the people;
- ii. Supplier prohibits its employees, subcontractors and suppliers, and Supplier-authorized resellers from configuring Supplier products and services in a manner that will result in the violation of applicable laws, this Agreement, any restrictions set out by Supplier's business ethics committee, or any international human rights standards and best practices including, but not limited to the human rights standards set forth in Section 3.(k) (Compliance), and requires them to inform Supplier's compliance officer of any such request or on becoming aware of any such activity;
- iii. Supplier may require that an End User annually certifies in writing to Supplier that it has complied with the End User License Agreement (including but not limited to Section 5 (License Conditions), Section 15 (Compliance with Laws, Export Controls and U.S. Government Restricted Rights), Section 18 (Code of Conduct) of the End User License Agreement), and with all applicable laws, and the End User will take appropriate remedial steps and promptly notify Supplier in writing if it should it learn of or have reason to suspect any breach thereof;
- iv. Supplier may require Distributors and Resellers to annually certify in writing to Supplier that Distributor and Reseller have complied with this Agreement including but not limited to including but not limited to Sections 2.2 (Business Conduct), 3.(k) (Compliance), 9 (Ownership of Intellectual Property), 10 (Protection of Confidential Information), 12.I (Export Control Restrictions) or 12.m (U.S. Government Restricted Rights), and with all applicable laws, and Distributors and Resellers agree that they will take appropriate remedial steps and promptly notify Supplier in writing if it should it learn of or have reason to suspect any breach thereof.

2.3 Marketing, Promotion and Sales. Resellers and Distributors shall, based on its own planning, costs and expense sell Products and Services only as delivered by Supplier. Resellers and Distributors shall not: (i) incur any expense on behalf of Supplier, or (ii) separate Products and Services into parts for separate sale or combination with other parts without the prior written approval of Supplier.

2.4 Other Responsibilities. Resellers and Distributors shall promptly report to Supplier any suspected defects or safety problems in Products and Services, keep Supplier informed of any End User complaints relating to Products and Services, and cooperate with and assist Supplier in working with the End User in the implementation of any field retrofits required by Supplier to correct Product and Services defects or problems.

2.5 Own Use. Resellers and Distributors may purchase Products (licenses in the case of Software) from Supplier for their own internal testing, evaluation and performance of demonstrations to prospective End Users for the purpose of reselling similar Products to such prospective End Users (collectively, “**Resale Demonstration**”). Should the Reseller or Distributor wish to purchase Products (licenses in the case of Software) from Supplier for its own internal use as an End User (rather than for Resale Demonstration purposes) Reseller or Distributor shall enter into a separate Master Supply and Services Agreement with Supplier to govern in relation thereto. With respect to Reseller’s or Distributor’s purchase of Products (licenses in the case of Software) for Resale Demonstration purposes, Resellers and Distributors hereby confirm that Reseller or Distributor agrees, as an End User, to comply with: (a) the End User License Agreement; and (b) the End User Support Terms if Support and Maintenance Services are provided by Supplier with such Products, or if Support and Maintenance Services are purchased by Reseller or Distributor for such Products. In addition, Section 3 (Orders and Payment Terms), Section 8(f) (Warranty Disclaimers), Section 9 (Ownership of Intellectual Property), Section 10 (Protection of Confidential Information), Section 12 (General Provisions), shall apply to Reseller’s or Distributor’s use of the Products for Resale Demonstration purposes pursuant to this Section 2.5 (Own Use), subject to and conditional upon: (i) such Products are not for resale by Reseller or Distributor; (ii) Resellers and Distributors shall not put such Products into production or into any production environment; (iii) Supplier has no liability to Reseller or Distributor for such Products other than to supply the Products identified on an Order; warrant the Products in accordance with Section 8(f) (Warranties and Disclaimers); and if provided by Supplier with such Products or purchased by Reseller or Distributor from Supplier, provide Support and Maintenance Services to Reseller or Distributor for the Products in accordance with the End User Support Terms for so long as Reseller or Distributor is current in its payments for such Support and Maintenance Services; and (iv) Reseller’s or Distributor’s rights of use of such Products automatically expire and terminate on the expiry or termination of this Agreement.

3. Orders and Payment Terms.

- (a) **Products.** Customer will initiate Product purchases under this Agreement by submitting written binding non-cancellable Purchase Orders to Supplier. All Purchase Orders shall specify: (i) the Purchase Order number; (ii) the billing address; (iii) the End User’s name; (iv) requested delivery date; (v) the Product or part numbers, description and price; (vi) quantity purchased; (vii) destination or ship-to address and routing instructions; (viii) authorized signature; and (ix) such other information as Supplier may reasonably request. Purchase Orders shall be addressed to Supplier.
- (b) **Services.** Customer will initiate Service purchases under this Agreement by submitting written Purchase Orders to Supplier citing the Supplier quotation or renewal notice and, if for Professional Services, including a signed SOW.
- (c) All Purchase Orders submitted under this Agreement shall be deemed to incorporate all terms and conditions of this Agreement. Any terms and conditions that are in addition to or inconsistent with the terms and conditions of this Agreement (including Customer’s

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standard purchasing terms or conditions, delivery slips, packing instructions, or posted terms and conditions), whether included with, or referenced in, such Purchase Order, shall be expressly stricken, null and void, unless a written amendment modifying this Agreement is agreed to and signed by an authorized representative of Supplier. Each Purchase Order is subject to Supplier's assessment of Customer's creditworthiness and payment history at the time such Purchase Order is received. Supplier expressly reserves the right, in Supplier's absolute and sole discretion, to reject any Purchase Order.

- (d) **Lead Time for Product Orders.** Unless otherwise agreed with the Customer, the normal lead-time for Hardware delivery will be sixty (60) days from acceptance of the Purchase Order. Supplier will confirm acceptance of the Purchase Order in writing. Supplier will use commercially reasonable efforts to meet the requested delivery date, but Supplier shall not be liable for any delays or non-fulfillment by the requested delivery date. If all Products listed on an accepted Purchase Order are not available as of the delivery date then Supplier shall have the discretion to deliver the portion of the Purchase Order representing the Products that are available.
- (e) **Change Orders for Products.** Customer may submit a written change order without penalty to delay, change or cancel any Purchase Orders that have not yet been accepted by Supplier. After a Purchase Order has been accepted, the following provisions shall apply:
- i. Customer may submit a written change order thirty (30) days or more prior to the originally scheduled delivery date of an Order to delay shipment of an Order for up to forty-five (45) days from the originally scheduled delivery date subject to a five percent (5%) order-rescheduling fee;
 - ii. Customer may submit a written change order thirty (30) days or more prior to the originally scheduled delivery date of an Order to cancel, partially cancel or change the configuration of an Order subject to a twenty percent (20%) re-stocking fee on the cancelled or changed portion; and
 - iii. Orders within thirty (30) days of the originally scheduled delivery date may not be delayed, changed or canceled.
- (f) **Delivery Terms.** Supplier shall deliver Products Ordered hereunder FCA point of origin (as defined in the Incoterms 2020). Customer agrees to allow delivery of partial quantities of the Products Ordered and to pay for the Product comprising the partial delivery per the terms specified in Section 3.(h) (Payment Terms) after the date of Supplier's invoice; provided, however, that Supplier shall only submit an invoice for Product that it has shipped, unless otherwise agreed to in writing by the parties. Customer is responsible for arranging all importation / exportation / customs clearances.

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(g) **Title and Risk of Loss.** Title of ownership for Hardware shall pass as per the delivery set out in this Agreement. All risks of loss or damage shall pass to Customer upon delivery by Supplier to Customer's carrier at Supplier's manufacturing facilities in either Waterloo, Ontario, Canada or Fremont, California, USA. Customer may specify its designated carrier in the Purchase Order, failing which; Supplier shall select a reputable and economically reasonable carrier and arrange shipping on behalf of Customer. Customer will reimburse Supplier for all costs incurred on behalf of the Customer in connection with shipping, insurance and other freight related charges. Except for the limited licenses granted herein, Customer shall have no interest in the Software, and shall therefore keep the Software free of all security interests, liens, and other encumbrances. Title to Software shall remain exclusively with Supplier.

(h) **Payment Terms.**

- i. Products. Subject to Supplier's credit evaluation and approval, the full payment for Products (other than Software) is due thirty (30) days after the date on the invoice, which may be issued by Supplier to Customer upon delivery of the Products in accordance with the terms of this Agreement. Except in accordance with Section 3.(e) (Change Orders for Products), Orders for Products are non-cancellable and non-refundable.
- ii. Software. Subject to Supplier's credit evaluation and approval, the full payment for Software, where delivery takes place separate from Hardware (including Cloud Software and Software Modules), is due thirty (30) days after the date on the invoice, which may be issued by Supplier to Customer when Customer has been advised in writing (which may be by email) that such Software is accessible or available for download, as applicable. Customer may specify a required accessibility / availability date in their Purchase Order, in which case Supplier shall use commercially reasonable efforts to comply with such date but Supplier shall not be liable for any delays or non-fulfillment by the requested delivery date. Unless otherwise specified by the Customer in the Purchase Order, Supplier will use commercially reasonable efforts to provide Software to Customer upon Supplier's acknowledgement of its acceptance of the Customer's Order for the Software. The license fees are paid for all Subscription Software in advance for the full duration of the Subscription Term. The licenses and fees for Software are non-cancellable and non-refundable.
- iii. Support and Maintenance Services. Supplier shall invoice Customer annually in advance for the Support and Maintenance Services based on the delivery date of the Products to the earlier of the Reseller or Distributor. Supplier shall provide an annual renewal notice sixty (60) days prior to each anniversary thereafter. Invoices for Professional Services related to Support and Maintenance Services shall be submitted to the Customer on a case by case basis. Subject to Supplier's credit evaluation and approval, the full payment of

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invoices submitted to Customer by Supplier for Support and Maintenance Services shall be paid by Customer within thirty (30) days of the invoice date. Fees for Support and Maintenance Services are non-cancellable and non-refundable. Support and Maintenance Services for Subscription Software (including Software Modules that are provided as Subscription Software) is included in the license fee for the Subscription Software unless otherwise specified in the applicable Supplier quotation.

- iv. **Statements of Work.** The fees set out in a SOW shall be payable by Customer in accordance with the terms of this Agreement and the SOW. Subject to Supplier's credit evaluation and approval, the full payment of fees invoiced under a SOW are due thirty (30) days following the date of the invoice. Fees pertaining to any SOW may not be relied upon for any future Services or SOW. Unless the SOW expressly states otherwise, the fees set out in the SOW do not include travel expenses or taxes.
 - v. **Late Payments.** Late payments will be assessed a service charge, calculated with the lesser of 1.5% per month or the maximum rate allowed by law, for the overdue balance. If Customer fails to make payments when due, Supplier may (with or without notice to Distributor, Reseller or the End User) take certain actions it deems appropriate including, but not limited to, Supplier may temporarily or permanently suspend or cancel performance (in part or entirely) of: (i) any open Orders, (ii) any Services, (iii) the End User's use of Software or Services, or (iv) access to support and maintenance by Distributor, Reseller and/or one or more End Users. Customer shall pay all reasonable costs incurred by Supplier in collecting any amounts due to Supplier by Customer, including reasonable attorney fees and costs.
 - vi. **Currency and Transfer.** All payments must be made by wire transfer and in the currency as specified on Supplier's invoice or, in the absence of a currency being specified on the invoice, in United States dollars.
 - vii. **Security Interest.** Until Supplier has received payment of the full purchase price of Hardware acquired by Customer under this Agreement, Supplier shall retain, and Customer hereby grants to Supplier, a security interest in the Hardware and any proceeds therefrom. Customer agrees to promptly execute any documents requested by Supplier to document, perfect, protect, re-file and/or renew such security interest.
- (i) **Taxes.** The prices are exclusive of taxes and Customer will be responsible for any of the following: (i) sales, value-added, use, excise, withholding and other applicable taxes, (ii) import, export, or customs duties, tariffs and/or taxes, (iii) any government permits or license fees and/or inspection fees, (iv) other assessments to purchase, ship, import and sell Products or Services other than any taxes based on Supplier's income or gross

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revenue, and (v) any penalties and interest charges relating to the foregoing, or any costs expended by Supplier to collect such amounts from Customer. The foregoing responsibilities are applicable to initial shipments and subsequent shipments (including any returns via RMA processes or otherwise). If the jurisdiction in which Customer is located requires Customer to withhold any taxes from the payment of the purchase price, the purchase price shall then be automatically deemed to be grossed up by an amount equal to the applicable withholding taxes so that the net amount received by Supplier shall be equal to the agreed upon purchase price. If Customer fails to pay any applicable taxes as of their original due date or as a result of taxes not being charged to the Distributor or Reseller and Supplier receives an assessment or other notice (collectively, the "Assessment") from any governmental taxing authority stating that such taxes are due from Supplier, then Supplier shall give Customer written notice of the Assessment and Customer shall pay the taxing authority within thirty (30) days of the receipt of such written notice from Supplier.

- (j) **End of Life.** End User agrees to only use Supported Releases. Once two (2) years passes from the General Availability of a Supported Release, the Supported Release will automatically be end of life Software and, notwithstanding any Support and Maintenance Services agreements that may be in place, Supplier's only Support and Maintenance Services obligations on end of life Software is to provide reasonable efforts on Severity 1 – Critical (as defined in Supplier's End User Support Terms) system restoration issues. Supplier reserves the right to not renew a Support and Maintenance Services agreement for Hardware and/or Software that has been subject to an end of life announcement. Notwithstanding the foregoing, a Maintenance Release will be made obsolete and thus not a Supported Release as of the General Availability of the next Maintenance Release and the installation of a Maintenance Release does not extend the lifetime of the related LTS Release under Supplier's end of life policy. Supplier reserves the right to discontinue the manufacture or sale of, or otherwise render or treat as obsolete, any or all of the Products covered by this Agreement. Supplier will provide a minimum of ninety (90) days advance notice (which may be by email, or via the Portal, or as otherwise reasonably determined by Supplier), or the notice as required by law, prior to discontinuing any Hardware in accordance with Supplier's end-of-life policy. Supplier will also announce last time buy dates for Products to permit End User to purchase (while quantities last) the Product subject to the last time buy announcement. After the last time buy date passes and provided no new features are added to the last LTS Release compatible with the Hardware product and the Hardware product has not reached the end of life milestone date, Supplier: (a) will make available signature updates for such Supported Release; and (b) advises the traffic classification may degrade for some applications after the last time buy date. Provided that the End User has purchased Support and Maintenance Services for the Product for the continuous period from its acquisition of the Product through to the date of discontinuation, Supplier will continue to make available Support and Maintenance Services in respect of: (a) discontinued Hardware, for a period of three (3) years from the date of discontinuation;

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and (b) a discontinued Supported Release of Software, for a period of two (2) years from the date of General Availability.

- (k) **Compliance.** Customer hereby certifies that it will: (i) fully comply with all laws and regulations applicable to the use of the Products and Services, including privacy, data protection and national security related laws and regulations; and (ii) obtain all the consents and/or decrees to the extent required by law. Customer hereby certifies that Customer shall not, and shall not permit anyone else to, install or configure the Product or any Third Party Item, alone or in combination with other activities, products or services, in any activity or manner that violates, or supports, assists, facilitates, enables, constitutes or is otherwise deemed to be a violation of:

- i. any law, order or regulation, or is otherwise for criminal purposes; or
- ii. any fundamental human rights standards of any person, group, or community, as set forth in applicable internationally-recognized human rights instruments, such as the Universal Declaration of Human Rights, (<https://www.un.org/en/universal-declaration-human-rights/>), the International Covenant on Civil and Political Rights (<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>), and the International Labor Organization Declaration on Fundamental Principles and Rights at Work (<https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>),

including, without limitation, by:

- (I) Distributor: Distributor, any Distributor affiliate, employee, contractor, licensor, supplier or customer;
- (II) Reseller: Reseller, any Reseller affiliate, employee, contractor, licensor, supplier or customer;
- (II) End User: any End User, any End User affiliate, employee, contractor, licensor, supplier or customer;
- (III) Supplier: Supplier, any Supplier affiliate, employee, contractor, licensor or supplier of Supplier; or
- (IV) Government: any federal, state, local, judicial or other governing body having jurisdiction over any of the foregoing.

- 4. Statements of Work.** Supplier may deliver Professional Services for the Customer pursuant to SOWs signed by Supplier and Customer. To the extent that Customer makes commitments to Supplier under a SOW in connection with Professional Services or otherwise, Customer shall accurately incorporate all such requirements, Specifications, milestones, Deliverables from SOWs into its contracts with the End User. All SOWs shall be mutually agreed upon by the parties and executed by their authorized representatives. Each SOW shall be incorporated into and governed by this Agreement and neither party will have any obligation to provide or

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accept any Deliverables or Professional Services until such SOW is accepted in writing by both parties. This Agreement and the applicable SOW(s) shall govern and supersede any terms and conditions stated on any Purchase Order submitted by Customer or invoice issued by Supplier. Section 12.b. (Entire Agreement; Governing Terms) sets out how any conflicts that arise between these terms and conditions and SOW shall be determined. Any SOW may be modified only by the mutual signed written agreement of the parties. Deliverables and/or Service milestones shall be deemed to be completed upon notification from Supplier to Customer. Deliverables and/or Service milestones shall be deemed accepted on the earlier of: (i) delivery of notice of acceptance to Supplier to Customer; (ii) five (5) calendar days after notification of completion by Supplier to Customer; or (iii) the date a Product is used in the Distributor's, Reseller's or End User's daily operations or in any way put into production or to commercial use by the Distributor, Reseller or End User. Customer shall provide Supplier with remote visibility into the End User's systems in a manner specified by Supplier to Customer as part of the implementation of the Supplier solution under the Agreement or any SOW. Remote visibility means external access to the Supplier solution to provide visibility into the Supplier solution performance that is reasonably required for Supplier to identify and perform Professional Services and/or Support and Maintenance Services. Notwithstanding the foregoing, under the circumstance that the Distributor, Reseller and/or End User is not ready for a period of thirty (30) days to proceed to any of the Service milestones, Supplier shall notify the Distributor, Reseller and/or End User, as applicable, that the project described in the SOW has entered a state of dormancy ("**Dormancy Notice**"). If within thirty (30) days of the date of the Dormancy Notice, Distributor, Reseller and/or End User is not ready to proceed to the next Service milestone, the project will be deemed closed and Supplier shall be able to invoice Customer for the full amount of any remaining fees under the SOW.

5. End User License Agreement. Customer shall ensure that it "passes through" all of Supplier's terms associated with Supplier's Products and Services to End Users and Distributors and Resellers shall require each End User to sign or agree to Supplier's then-current End User License Agreement and End User Support Terms, as applicable. If Distributor or Reseller sells Products and/or Services directly to an End User, Distributor or Reseller shall ensure that it "passes through" all of Supplier's terms associated with Supplier's Products and Services to End Users and Distributor or Reseller shall require each End User to sign or agree to Supplier's then-current End User License Agreement and End User Support Terms, as applicable. Distributor shall ensure that Resellers "pass through" all of Supplier's terms associated with Supplier's Products and Services and that Reseller's require each End User to sign or agree to Supplier's then-current End User License Agreement and End User Support Terms, as applicable.

6. Support and Maintenance Services.

6.1 In exchange for payment of the applicable Support and Maintenance Services fees, the Parties agree to provide Support and Maintenance Services to the End User in accordance with the Support Plan and the End User Support Terms commencing on the date of delivery to the earlier of Distributor or Reseller, or as otherwise specified in Supplier's quotation. If the

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Customer requests to reinstate Support and Maintenance Services in respect of a Product after a period of non-enrollment (which is not applicable for Subscription Software which is inclusive of the Support and Maintenance Services), Customer shall be required to pay all arrears of support and maintenance fees for the period of non-coverage to reinstate current coverage. For clarity, there is no Support and Maintenance Services for Custom Software Modules or Professional Services.

6.2 If Software is licensed for a fixed term period and the End User chooses not to: (a) purchase Support and Maintenance Services in respect of the Software during that fixed term period, or (b) renew the Support and Maintenance Services agreement in respect of the Software during that fixed term period, the End User shall be entitled to continue to use the last installed version of the Software and Supplier has no obligation to provide any assistance, support, maintenance, upgrades or updates.

6.3 Where Software is licensed perpetually and the End User:

- (a) purchases Support and Maintenance Services in respect of the Software for a fixed term period, the End User shall be entitled to Support and Maintenance Services in respect of the Software and may install and use new versions of the licensed Software (if any) that are released by Supplier during that fixed term period; and
- (b) does not purchase Support and Maintenance Services in respect of the Software for a fixed term period, or if the fixed term period has expired, the End User shall be entitled to continue to use the last version of the Software installed by the End User.

The End User may choose to purchase Support and Maintenance Services for the installed version of the licensed Software up until Supplier declares the end of support for the installed version of the licensed Software in order to receive Support and Maintenance Services in respect of the Software, however the End User will not be entitled to any new versions, upgrades or updates to the Software after Supplier declares the end of support for the installed version of the licensed Software. After the expiry of any Support and Maintenance Services agreement for the installed version of the licensed Software, the End User may continue to use the installed version of the licensed Software and Supplier has no obligation to provide any assistance, support, maintenance, upgrades or updates. Supplier shall have no obligation under this Agreement, the End User License Agreement, End User Support Terms or any other agreement or documentation (including under any Support and Maintenance Services agreement) to directly or indirectly provide an End User with any assistance, support, maintenance, upgrades or updates to any Products, or any part thereof, if the End User fails to pay all fees for the Products or fails to comply with any part of the End User License Agreement (including but not limited to Section 5 (License Conditions), or Section 15 (Compliance with Laws, Export Controls and U.S. Government Restricted Rights), or Section 18 (Code of Conduct) of the End User License Agreement).

7. Training

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- a. **Purchasing Training Courses.** All training courses must be completed within six (6) months from the Order whether for Distributor, Reseller or End User. At the end of the six (6) month period the outstanding balance for any courses not completed shall become payable and Supplier shall be entitled to invoice the Customer immediately with payment due by Customer within thirty (30) days of the date of the invoice. Notwithstanding the foregoing, if the delay in completing training courses is a result of Supplier's delay in scheduling due to availability of courses or training resources, then the six (6) month period shall be extended for a period of time equal to the duration of such delay. Customer agrees that the requirement to complete all courses within six (6) months or pay the outstanding balance for courses not completed is not a penalty but instead a reconciliation payment to offset the discount originally applied to the purchase of training courses.
- b. **Rescheduling.** Training courses can be rescheduled to a later date within six (6) months from the Order without charge or penalty with at least fourteen (14) days prior written notice to Supplier. Should a training course need to be rescheduled with less than fourteen (14) days but more than three (3) days written notice, a rescheduling fee equal to twenty percent (20%) of the original fee shall be payable by the Customer and the new date must be within six (6) months from the Order. No rescheduling shall be permitted on less than three (3) days written notice, which shall constitute a cancellation.
- c. **Cancellation.** Training courses can be cancelled without charge or penalty with at least fourteen (14) days prior written notice to Supplier. Should a training course need to be cancelled between fourteen (14) days and ten (10) days prior to the training start date, a cancellation fee of fifty percent (50%) of the course fee shall be payable by the Customer. If the training course is cancelled with less than ten (10) days written notice, a cancellation fee equal to the full course fee shall be payable by the Customer. In the event of a cancellation, all prepaid fees shall be refunded to the Customer, subject to deduction of any applicable cancellation fee as described above.
- d. **Class Size.** So that a high quality learning experience can be delivered for training attendees, all class sizes are limited to a maximum of eight (8) attendees unless otherwise expressly agreed by Supplier.
- e. **Training Materials.** As part of a training course, Customer shall have access to Training Materials through Supplier's website or otherwise. Supplier hereby grants to Customer and Customer hereby accepts a non-exclusive, non-transferable, revocable right and license to access and use the Training Materials for the sole purpose of obtaining training on Supplier Products and Services. Customer acknowledges that the license to use Training Materials shall not include a right to enhance, alter, upgrade, reproduce or produce derivative works based upon the Training Materials except as permitted herein, nor the right to transfer, assign or disclose the Training Materials to any third party. Supplier shall retain the ownership of, copyright in, and all Intellectual Property Rights in and to the Training Materials, in whatever form and media, and all parts thereof. If the

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Distributor or Reseller purchases training courses to be resold and performed by Supplier for the benefit of an End User then Distributor or Reseller shall be granted the right to sublicense its rights in the Training Materials to the End User.

8. **Warranties and Disclaimers**

a. **Product and Services Warranties.**

- i. **Hardware.** Supplier warrants that the Hardware shall be free from defects in material and workmanship and shall comply with the Specifications in all material respects under normal uses and conditions for a period of ninety (90) days from the date of delivery of such Hardware by Supplier to the Customer. This warranty does not apply if the Hardware: (a) has been altered, except by Supplier or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Supplier, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, abuse, misuse, neglect, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. THE PROVISIONS OF THIS SECTION STATE SUPPLIER'S ENTIRE RESPONSIBILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY BREACH OF ANY WARRANTY REGARDING THE HARDWARE SUPPLIED HEREUNDER.
- ii. **Software.** In the event that any Supported Release of Software (excluding, for greater certainty, any trial Products or pre-release Products) fails to substantially comply with Supplier's Specifications for that Supported Release used under normal conditions and in compliance with this Agreement and applicable Documentation, then, provided Supplier has been notified in writing and in reasonable detail of such failure so as to allow Supplier to replicate such failure within ninety (90) days of delivery of such Supported Release, Supplier will provide Support and Maintenance Services (when they have been acquired by the End User for the affected Supported Release) to address such failure. Supplier does not warrant that the Software will meet Distributor's, Reseller's or an End User's requirements or specifications or is free from defects or that the operation of the Software will be uninterrupted, error free, virus-free or secure. This warranty does not apply if the Software, or any other equipment upon which the Software is authorized to be used: (a) has been altered, except by Supplier or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Supplier, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, abuse, misuse, neglect, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration

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purposes. THE PROVISIONS OF THIS SECTION STATE SUPPLIER'S ENTIRE RESPONSIBILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY BREACH OF ANY WARRANTY REGARDING THE SOFTWARE, MEDIA AND DOCUMENTATION SUPPLIED HEREUNDER.

- iii. **Services.** Supplier warrants that the Services will be performed in a professional and workmanlike manner. Customer must notify Supplier of any Services warranty deficiencies within thirty (30) days from performance of the Services.

- b. **Exclusions.** The express Product warranties specifically exclude any problem with a Product caused by: (i) physical damage caused through no fault of Supplier during shipment to or from Customer, (ii) use of Products in an application or operating environment not specified by Supplier, (iii) installation, modifications or maintenance to Products by Customer or any third party other than Supplier, (iv) the operation of Software that is not a Supported Release, (v) exposure to unusual physical or electrical stress, or (vi) Customer operating insufficient levels of the Products, Devices, and/or Third Party Items including, without limitation, based on the Customer's Circumstances (as defined below). Each end customer has unique requirements and circumstances including, without limitation, with respect to their budget, functional requirements, use case, policy customization, capacity requirements, compatibility requirements, subscriber base volume, subscriber demographics, data usage, data volumes, network infrastructure and network design ("**Circumstances**"). If Supplier provides any comments or statements to Customer regarding the volume of Products, Devices, and/or Third Party Items the Customer should consider using, such comments or statements are merely suggestions. Notwithstanding anything to the contrary, or that Supplier provides such comments or statements, in any other document, purchase order or quotation, such comments or statements by Supplier shall not, at any time: (a) constitute advice or a recommendation or guarantee by Supplier that those volumes of Products, Devices, and/or Third Party Items will satisfy any of the Customer's Circumstances at any point in time; or (b) obligate Supplier to provide additional or alternative products or services to Customer at Supplier's cost.

- c. **Returns.**
 - i. **Hardware.** Prior to requesting any return of Hardware, Customer shall ensure that the Hardware is defective utilizing the diagnostic capability provided by Supplier via the Support Portal and confirm with a Supplier representative that the Hardware functionality cannot be restored. Prior to shipping any Hardware to Supplier, Customer shall obtain a Returned Material Authorization (RMA) number from Supplier and shall include this number along with a detailed description of the defect. All shipping costs shall be borne by Customer (including as set out in Section 3.(i) (Taxes), except for the return shipment to

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Customer of Hardware repaired or replaced by Supplier under warranty during the original warranty period. Customer shall comply with Supplier's RMA policy, which may be updated by Supplier from time to time. Following shipment of the defective Hardware by Customer to Supplier, Supplier will use commercially reasonable efforts to either repair or replace (at Supplier's sole option and expense) defective Hardware within thirty (30) days of receipt during the warranty period. If Supplier determines in its absolute and sole discretion that the Hardware cannot be repaired or replaced, Supplier may refund the purchase price for the Hardware. Acceptance by Supplier of Hardware under warranty is subject to Supplier's final inspection and approval. Supplier reserves the right to resolve return issues directly with the Customer as and when Supplier deems it appropriate. The warranty period for repaired or replaced Hardware shall be the balance of the original warranty period.

- ii. *On-Premise Software*. If Customer identifies a material defect with the media on which any Software is provided during the Software warranty period, Customer's sole remedy will be to return the Software media to Supplier and Supplier will provide Customer with replacement media containing the applicable Software. If Supplier determines that the media is not defective, Supplier shall return the media to Customer at Customer's expense. If, during the Software warranty period, the Software does not operate substantially in accordance with, and have the functionality set out in, the Specifications under normal uses and conditions, Supplier will, in its sole discretion, either: (i) repair and/or replace the Software, or (ii) terminate the Order (or part thereof) for the Software and refund the fees paid by Customer to Supplier for the affected Software.
- d. **Non-Transferability**. This limited warranty will remain in effect notwithstanding a Distributor's or Reseller's shipment through to an End User, but the above warranties and associated remedies are applicable only to the Distributor or Reseller and are not transferable by the Distributor or Reseller to the End User or anyone else.
- e. **Remedies**. Supplier's sole, exclusive and maximum liability and Customer's sole, exclusive and maximum remedy as against Supplier for a breach of the warranties described in Section 8.a. (Product and Services Warranties) for which it receives notice within the applicable warranty period is expressly limited as follows:
 - i. *Products*. At Supplier's option, to either: (i) refund the fees paid by Customer for such Products (without interest), or (ii) repair and/or replacement of such Products.
 - ii. *Services*. Supplier shall re-perform, at its expense, any Services which did not comply with the applicable warranty, otherwise the Services are deemed accepted by Customer.

- f. **Warranty Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 8. (WARRANTIES AND DISCLAIMERS), THE HARDWARE, SOFTWARE, MEDIA AND DOCUMENTATION, SERVICES AND THIRD PARTY ITEMS ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY OF ANY KIND. SUPPLIER, ON BEHALF OF ITSELF, AND ITS AFFILIATES AND THEIR SUPPLIERS AND LICENSORS HEREBY EXPRESSLY DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS, WARRANTIES AND CONDITIONS OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. SUPPLIER DOES NOT WARRANT THAT THE PRODUCTS OR THIRD PARTY ITEMS WILL MEET DISTRIBUTOR’S, RESELLER’S OR AN END USER’S REQUIREMENTS, CIRCUMSTANCES OR SPECIFICATIONS. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF PARTICULAR WARRANTIES AND TO THE EXTENT THAT LAWS IN SUCH JURISDICTION ARE CONTROLLING, ONE OR MORE OF THE FOREGOING DISCLAIMERS MAY NOT APPLY. FOR CLARITY, THERE IS NO WARRANTY OR SUPPORT PROVIDED BY SUPPLIER FOR ANY THIRD PARTY ITEMS.

9. Ownership of Intellectual Property

- a. **Products.** Customer agrees that Supplier owns solely and exclusively all rights, title, and interest to the intellectual property in the Products (whether the Products are separate or combined with any other products or services), including all of Supplier’s Intellectual Property Rights in and relating to the design, manufacture, operation and service for the Products, including Hardware, Deliverables, Software and Documentation. Supplier hereby grants:
- i. Distributor the non-exclusive, non-transferable right to market, distribute and sublicense Software and Documentation to the End User who has signed or agreed to Supplier’s then-current End User License Agreement and the right to market and promote Support and Maintenance Services to an End User who has signed or agreed to Supplier’s then-current End User Support Terms. This right may be exercised directly between Distributor and an End User or through a Reseller.
 - ii. Reseller the non-exclusive, non-transferable right to market, distribute and sublicense Software and Documentation to the End User who has signed or agreed to Supplier’s then-current End User License Agreement and the right to market and promote Support and Maintenance Services to an End User who has signed or agreed to Supplier’s then-current End User Support Terms.

Customer acknowledges and agrees that Distributor, Resellers and End Users do not acquire any intellectual property or other proprietary rights, including patents,

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copyrights, trademarks, industrial, designs, moral, trade secret or confidential information in or relating to: (a) Supplier and Affiliates, or their suppliers and licensors, (b) Software, Documentation, or any part thereof, including any Software or Documentation embedded or pre-installed on any Device, (c) any translation or other derivative works relating to Software, Documentation, or any part thereof, or (d) any logos, trademarks, trade names of Supplier or Affiliates, or their suppliers and licensors (without limitation, “**Supplier’s Intellectual Property Rights**”). All of Supplier’s Intellectual Property Rights belong exclusively to Supplier and its Affiliates, or their suppliers and licensors. Customer agrees that it shall not refute or otherwise challenge the ownership of any of Supplier’s Intellectual Property Rights. All comments, ideas, changes or other feedback provided by Distributor, Resellers or End Users to Supplier regarding the Products or Supplier’s Intellectual Property Rights shall be owned by Supplier and its Affiliates, or their suppliers and licensors. All rights, title and interest not expressly granted herein are reserved by Supplier and Affiliates and their suppliers and licensors. Customer may not itself, nor permit others (including End Users) to: (i) modify, translate, reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from or create derivative works based on the Hardware, Software, Deliverables or Documentation; (ii) remove, modify, obscure, deface or otherwise alter or tamper with any copyright, trademark or other proprietary notices, labels, legends or marks on any Hardware, Software, Deliverable, Documentation or Third Party Item (including any copyright or other attribution statements for open source software); or (iii) use the Software other than as part of the Product in which the Software has been incorporated into or delivered for. Distributor and Reseller shall not be entitled to distribute Software, Hardware, Deliverables or Documentation to an End User for purposes of re-sale by such End User. Distributor and Reseller shall have no rights other than those expressly stated in this Agreement. Distributors and Resellers shall not be entitled to distribute Software, Hardware, Deliverables or Documentation for any purpose that is not expressly permitted for an End User by the End User License Agreement. Without limitation, Distributor and Reseller shall have no right to use, modify, enhance, copy, or sublicense any software or firmware embedded in any hardware.

b. Services.

- i. Supplier acknowledges Distributor’s, Reseller’s, End User’s and their licensors’ claims of proprietary rights in pre-existing works of authorship and other intellectual property that are provided by Distributor, Reseller or End User to Supplier in furtherance its work pursuant to a SOW (“**End User IP**”). For clarity, End User IP does not include any Software Modules (including Custom Software Modules provided for the End User) or any of the outputs of Standard Services or Custom Services. Supplier does not claim any right in End User IP, which shall not be deemed Deliverables even if incorporated within Deliverables. Nothing contained herein shall be deemed to afford Supplier any

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right to any End User IP, except as strictly necessary for the performance of the Services.

- ii. Customer agrees that, except for any End User IP, Supplier exclusively owns all rights, title and interest in the Deliverables, including all applicable Intellectual Property Rights in the Deliverables and that title thereto shall remain with Supplier. The Services and any Deliverables associated therewith do not constitute works for hire under any applicable copyright or similar laws. All applicable patents, copyrights, trademarks, trade secrets and other rights and interests in the Deliverables are and shall remain entirely in Supplier. All aspects of the Deliverables (other than information supplied to Supplier by the End User under notice of confidentiality) shall be deemed Confidential Information of Supplier. Customer shall include patent, copyright, trademark, confidential and proprietary marks and legends in all reproductions of Supplier Confidential Information, and shall not remove any such marks or legends from any Product or Confidential Information. To the extent that the Deliverables contain Confidential Information of the Distributor, Reseller or End User, use of that Confidential Information shall remain subject to the terms of this Agreement. All other aspects of the Deliverables shall be deemed Confidential Information of Supplier.
- iii. Upon payment in full of the amounts due hereunder, Customer shall be granted a revocable, non-transferable, non-exclusive, royalty free license for a one (1) year term, unless another license term is expressly set out in Supplier's quotation, to use the Deliverables for its Business Purposes. For the purposes of this Agreement, "**Business Purposes**" means: (1) the license of the Deliverable to the End User identified in the applicable Supplier quotation or SOW, (2) the integration of all or part of the Deliverable into a product for sale or license to the End User identified in the applicable Supplier quotation or SOW, or (3) another purpose that directly benefits the End User identified in the applicable Supplier quotation or SOW.
- iv. Customer acknowledges that Supplier provides similar services to other end users, customers, distributors, resellers and other entities and that nothing in this Agreement shall be construed to prevent Supplier from carrying on such business or from acquiring, licensing, marketing, distributing, developing for itself or others or having others develop for it similar products, services or materials performing the same or similar functions as the Services and Deliverables contemplated by this Agreement or any SOW. For greater certainty, Supplier is free to use without restriction its general knowledge, skills and experience and any ideas, concepts, know-how and techniques learned in the course of providing the Services.

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- c. **Intellectual Property Indemnification.** Supplier will defend and indemnify Customer for any damages and costs that are awarded against Customer based on a claim that the Products, Services, or Deliverables as provided by Supplier infringe on any valid patents or copyrights in Canada or the United States of a third party, provided that the Customer: (i) notifies Supplier in writing of any such claim within ten (10) days after learning thereof, (ii) gives Supplier full control over the defense and settlement of the claim, (iii) fully cooperates with Supplier for defense and settlement of the claim, and (iv) if Customer is a Distributor or Reseller, the Distributor's or Reseller's promotion, marketing and sales of the Products and Services are in full compliance with Supplier's guidelines and the terms and conditions of this Agreement. Supplier shall have no obligations in the event that: (a) the Product or Deliverable has been modified without prior written approval from Supplier, (b) the Product, Services, or Deliverable has been combined with other products items not supplied by Supplier provided that the Product, Services, or Deliverable prior to being so combined would not have caused the infringement claim, (c) the Product or Deliverable is used for an application not recommended by Supplier, (d) the current, unaltered release of the Product could have avoided the infringement claim, (e) any settlements have been entered into without prior written approval from Supplier, or (f) Customer was aware of the infringement claim as of the date of submitting a Purchase Order. If any such claim is brought or appears to Supplier likely to be brought, Supplier may at its own option: (A) replace or modify the Products, Services or Deliverable to make them non-infringing (B) secure rights for the Distributor, Reseller or End User to continue using the Products, Services or Deliverable, or (C) if Supplier, acting reasonably, determines that (A) and (B) are not commercially reasonable options, terminate any applicable licenses and refund to Customer, upon the return of such Products and Deliverables to Supplier, for (1) Hardware or perpetually-licensed Software, the amount received by Supplier for the returned Products depreciated on a five-year, straight-line basis (calculated daily); and (2) Software licensed on a term or subscription basis, any prepaid but unused amount received by Supplier for the returned Products. Distributor and Reseller must ensure that End User immediately discontinues all use of the Products, Services and Deliverables giving rise to the original claim without prior written approval from Supplier. THE FOREGOING STATES THE SOLE AND ENTIRE REMEDY OF DISTRIBUTOR, RESELLERS AND END USERS AND THE SOLE AND ENTIRE LIABILITY OF SUPPLIER FOR PATENT AND COPYRIGHT, OR ANY OTHER INTELLECTUAL PROPERTY RIGHTS, INFRINGEMENT BY ANY PRODUCT AND SERVICES FURNISHED UNDER THIS AGREEMENT. FOR CLARITY, THERE IS NO DEFENSE OR INDEMNITY PROVIDED BY SUPPLIER FOR ANY THIRD PARTY ITEMS.
- d. **Customer Indemnification.** Customer shall defend, indemnify and hold Supplier and its Affiliates, and their respective directors, officers and employees harmless against any and all damages, liability, costs and expenses (including legal fees and expenses) arising out of any third party (including End User) claim, suit, action or judgment

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(commenced or threatened) brought against Supplier resulting from: (a) for Distributors and Resellers, any warranty, representation or condition made by the Distributor or Distributor's Affiliates, or Reseller or Reseller's Affiliates, in respect of the Products or Services beyond that made by Supplier, (b) the infringement or alleged infringement of a third party's Intellectual Property Rights resulting from Supplier's compliance with any designs, specifications or instructions of Distributor, Distributor Affiliates, Reseller, Reseller's Affiliates or End Users, (c) any use of End User IP by Supplier in accordance with the terms hereof, (d) Distributor's, Reseller's or End User's use of Supplier's Products or Services other than as intended by Supplier, or (e) any failure to comply with, or breach of, Sections 2, 3, 4, 5, 8, 9, 10 or 12 of this Agreement or any applicable laws by Distributor, Distributor's Affiliates, Reseller, Reseller's Affiliates or End Users; provided that: (i) Supplier notifies the Customer promptly in writing of the claim, (ii) Supplier gives the Customer full authority to defend, negotiate and settle the claim, and (iii) Supplier fully discloses all facts and details and co-operates fully in the defense.

- e. **Reservation of Rights.** Supplier reserves all rights not expressly granted under this Agreement. Customer will use diligent efforts to protect Supplier's Intellectual Property Rights in the Products and Services and will report promptly to Supplier any potential infringement of such rights of which Customer becomes aware. Supplier reserves the sole and exclusive right at Supplier's discretion to assert claims for infringement or other violation of Supplier's Intellectual Property Rights.
- f. **Third Party Items.** Certain Third Party Items may be incorporated into Products or Products may be used in conjunction with Third Party Items. Third Party Items, and all intellectual property rights therein and relating thereto (including, without limitation, all trade secrets, know-how and copyrighted material in any form), shall remain the exclusive property of the third party licensor and Distributors, Resellers and End Users acquire no ownership rights in the Third Party Item. Refer to the End User License Agreement for additional terms and conditions. Supplier is in no way responsible for the selection, use, access, cost or implementation of any Third Party Item by Distributors, Reseller or an End User, regardless of how the Third Party Item is acquired or obtained, whether independent of or through Supplier. DISTRIBUTOR, RESELLER AND END USER ACKNOWLEDGE AND AGREE THAT, WHERE THE SUPPLIER SOLUTION IS DESIGNED TO FACILITATE ACCESS TO THIRD PARTY ITEMS, SUPPLIER HAS NO CONTROL OVER THE FUNCTIONALITY OR PERFORMANCE OR NON-PERFORMANCE OF SUCH THIRD PARTY ITEMS AND MAY NOT BE ABLE TO PROVIDE A FIX OR WORKAROUND FOR A PROBLEM IDENTIFIED THEREWITH.

10. Protection of Confidential Information

- a. **Confidential Information.** Each party acknowledges that it may be exposed to certain confidential and/or proprietary information and materials regarding the other party's business including, but not limited to, the provisions of this Agreement, information concerning a party's business, technology, customers and suppliers (including, without

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limitation, any information that is embedded in, or related to: (i) the business of Supplier and/or its Affiliates, (ii) any goods, products, software, services documentation that is disclosed, supplied or licensed by or on behalf of Supplier or its Affiliates, (iii) the technology, customers, suppliers or services of Supplier and/or its Affiliates, or (iv) the development, testing, or commercial exploitation of any of the foregoing; all of which are considered and deemed to be trade secrets of Supplier and/or its Affiliates), which: (a) is disclosed by the disclosing party in writing and is marked or identified as confidential or proprietary (or a like designation) at the time of disclosure or within a reasonable time thereafter, or (b) is disclosed by the disclosing party in any other manner and is identified as confidential at the time of disclosure or within a reasonable time thereafter, or (c) given the circumstances of the disclosure, should be understood by the recipient, exercising reasonable business judgment, to be confidential (“**Confidential Information**”). For clarity, the disclosing party’s customer lists, partner lists, marketing plans, business plans, product plans and pricing models, and Supplier’s Documentation and Software Modules, shall always be treated as Confidential Information regardless of whether they are marked or identified as being confidential or proprietary or provided in writing, orally or otherwise. Documentation and Software Modules contain information proprietary to Supplier (or its Affiliates or a third party to which Supplier may have a legal obligation to protect such information from unauthorized disclosure, use or duplication) and any disclosure, use or duplication of Documentation and Software Modules or any of the information therein, for any reason other than the specific purpose for which it was disclosed by Supplier is expressly prohibited, except to the extent that Supplier may otherwise authorize in writing.

- b. **Exclusions.** Confidential Information shall not include any information or material which: (i) was lawfully in the possession of the receiving party prior to receipt from the disclosing party, (ii) is or becomes publicly available through no wrongful act of the receiving party, (iii) is obtained by the receiving party from a third party without restriction, (iv) is independently developed by the receiving party, (v) is disclosed by the receiving party with the disclosing party’s prior written approval, or (vi) is required to be disclosed by a court of competent jurisdiction or other governmental authority provided that the receiving party takes reasonable steps to give the other party sufficient prior written notice so that it can challenge such requirement.
- c. **Restrictions.** Except in relation to trade secrets of Supplier and its Affiliates, each party shall for a period of five (5) years following the expiry or termination of this Agreement: (i) use a reasonable standard of care to protect Confidential Information which shall be no less protective than the manner in which the receiving party protects the confidentiality of and unwanted disclosure of its own confidential information, (ii) not use Confidential Information except as permitted by the disclosing party, (iii) not disclose Confidential Information except to its Affiliates, employees or representatives to whom disclosure is necessary to effect the purposes of this Agreement, and who are similarly bound to hold the Confidential Information in confidence; and (iv) not reproduce

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Confidential Information without the disclosing party's prior written consent. For clarity, trade secrets of Supplier and/or its Affiliates includes, without limitation, information that is embedded in, or related to: (a) the business of Supplier and/or its Affiliates, (b) any goods, products, software, services documentation that is disclosed, supplied or licensed by or on behalf of Supplier or its Affiliates, (c) the technology, customers, suppliers or services of Supplier and/or its Affiliates, or (d) the development, testing, or commercial exploitation of any of the foregoing. The confidentiality obligations of the Distributor, Reseller and End User shall apply indefinitely in relation to trade secrets of Supplier and/or its Affiliates.

- d. **Permitted Disclosures.** Either party may disclose the terms and conditions of this Agreement in confidence, and only to the extent reasonably necessary: (i) to legal counsel of the party; (ii) to accountants, banks, proposed investors, and financing sources and their advisors; (iii) in connection with the enforcement of this Agreement or rights under this Agreement; or (iv) in connection with a merger or acquisition or proposed merger or acquisition, or similar transaction.
- e. **Return of Confidential Information.** Each party shall, upon termination or expiration of this Agreement, return to the disclosing party all tangible manifestations containing Confidential Information that have been provided under this Agreement, including any copies and reproductions. The provisions of this subsection 10.e. (Return of Confidential Information) shall not apply to copies of electronically exchanged Confidential Information made as a matter of routine information technology backup and to Information or copies thereof which must be stored by the receiving party according to provisions of mandatory law, provided that such Confidential Information or copies thereof shall be subject to an indefinite confidentiality obligation according to the terms and conditions set forth herein.
- f. **Protection of Employee Personal Information.** As part of providing hardware, software, applications, tools, scripts, and/or services, including support and maintenance services, to Supplier-authorized distributors and resellers and End Users, Supplier may come to collect, use and share personal information relating to officers or employees of Supplier-authorized distributors and resellers and End Users (including full time, part time, and temporary employees) who interact with Supplier ("Employee Personal Information"). Supplier is the controller of the Employee Personal Information. Supplier may use the Employee Personal Information for the purposes of the legitimate business interests of Supplier, Supplier -authorized distributors and resellers and End Users, including to: (i) establish and fulfil contracts with Supplier-authorized distributors and resellers and End Users, (ii) provide customer service, (iii) assist in addressing inquiries from Supplier-authorized distributors and resellers and End Users, (iv) deliver training to Supplier-authorized distributors and resellers and End Users, and (v) communicate with Supplier-authorized distributors and resellers and End Users in relation to billing, activation, provision, maintenance, support, troubleshooting, resolving of disputes, deactivation, upgrade, or update of Supplier's products. For more

information on how Supplier protects Employee Personal Information, please refer to Supplier Privacy Policy available at: <https://www.sandvine.com/privacy-policy>. Please feel free to contact Supplier with any questions, comments or complaints about how Supplier handles Employee Personal Information, by delivery in person, by courier or by mail, at Sandvine Corporation, 408 Albert Street, Waterloo, Ontario, Canada, N2L 3V3, Attention: Legal Department, by calling at +519 880-2400, or by email to privacy@sandvine.com.

11. Limitations of Liability

- a. **Exclusion of Consequential Damages.** IN NO EVENT WILL SUPPLIER, ITS AFFILIATES OR THEIR SUPPLIERS OR LICENSORS BE LIABLE TO DISTRIBUTOR, RESELLERS OR END USERS FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES WHATSOEVER OR ANY DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR DATA, OR OTHER PECUNIARY LOSS, OR ANY LOSSES ASSOCIATED WITH THIRD PARTY ITEMS ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCT OR THIRD PARTY ITEM OR ANY INTELLECTUAL PROPERTY RIGHTS EMBODIED THEREIN, OR THE PERFORMANCE, INTERRUPTION OR FAILURE OF THE PRODUCT OR THIRD PARTY ITEM, IRRESPECTIVE OF THE CAUSE OF ACTION, EVEN IF SUPPLIER, ITS AFFILIATES OR THEIR SUPPLIERS OR LICENSORS BECOME AWARE OF OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF PARTICULAR LIABILITIES AND TO THE EXTENT THAT SUCH LAWS ARE CONTROLLING, ONE OR MORE OF THE FOREGOING EXCLUSIONS OR LIMITATIONS MAY NOT APPLY.
- b. **Aggregate Limitation.** SUBJECT TO SECTION 11.a. (EXCLUSION OF CONSEQUENTIAL DAMAGES) AND 11.c. (CERTAIN DAMAGES NOT EXCLUDED OR LIMITED), EITHER PARTY'S LIABILITY FOR ANY CLAIM, LOSS OR DAMAGE ARISING FROM THIS AGREEMENT SHALL AT ALL TIMES BE LIMITED TO ACTUAL DIRECT DAMAGES AND SHALL UNDER NO CIRCUMSTANCES EXCEED THE FEES PAID BY CUSTOMER TO SUPPLIER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PROCEEDING THE CLAIM FOR THE PRODUCTS OR SERVICES GIVING RISE TO SUCH CLAIM. FOR CLARITY, ANY LIABILITY THAT DISTRIBUTOR HAS TO A RESELLER OR AN END USER, OR RESELLER HAS TO AN END USER, FOR ANY DAMAGES, INCLUDING THE TYPES DESCRIBED IN SECTION 11.a (EXCLUSION OF CONSEQUENTIAL DAMAGES) SHALL NOT BE INCLUDED AS DIRECT DAMAGES SUFFERED BY DISTRIBUTOR OR RESELLER. DISTRIBUTOR'S AND RESELLER'S RECOVERY FROM SUPPLIER FOR ANY CLAIM RELATED TO SERVICES SHALL NOT EXCEED THE FEES PAID BY DISTRIBUTOR OR RESELLER TO SUPPLIER FOR THE SERVICES GIVING RISE TO SUCH CLAIM, IRRESPECTIVE

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OF THE NATURE OF THE CLAIM, WHETHER IN TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), CONTRACT OR OTHERWISE.

- c. **Certain Damages Not Excluded or Limited.** SUBJECT TO SECTION 11.a (EXCLUSION OF CONSEQUENTIAL DAMAGES), NOTWITHSTANDING THE FOREGOING, NO LIMITATION OF EITHER PARTY'S LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO: (A) DAMAGES ARISING FROM INFRINGEMENT OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS; (B) ANY CLAIMS FOR NON-PAYMENT, (C) FRAUD OR WILLFUL MISCONDUCT, OR (D) WITH RESPECT TO DISTRIBUTOR AND RESELLER, ANY FAILURE TO COMPLY WITH, OR BREACH OF, SECTIONS 2, 3, 4, 5, 8, 9, 10 OR 12 OF THIS AGREEMENT OR ANY APPLICABLE LAWS BY DISTRIBUTOR, DISTRIBUTOR'S AFFILIATES, RESELLER, RESELLER'S AFFILIATES OR END USERS.
- d. **Application of Exclusions and Limitations.** The foregoing limitations and exclusions of liability shall apply regardless of whether the action arose in contract including, without limitation, from a fundamental breach, or breach of a condition, fundamental term or warranty, or in tort (including negligence) or otherwise.
- e. **Third Party Items.** IN NO EVENT SHALL SUPPLIER OR THE THIRD PARTY LICENSORS OF THIRD PARTY ITEMS BE LIABLE TO DISTRIBUTOR, RESELLER OR ANY END USERS FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OF DATA, LOSS OF SALES OR PROFIT OR FAILURE TO REALIZE EXPECTED SAVINGS, BUSINESS INTERRUPTION, LOSS OF BUSINESS, PERSONAL INJURY, PROPERTY DAMAGE) ASSOCIATED WITH OR ARISING IN RELATION TO ANY THIRD PARTY ITEMS: (A) WHETHER OR NOT SUCH LOSSES, DAMAGES OR FAILURE TO REALIZE ARE CONSIDERED DIRECT OR INDIRECT OR SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES; AND (B) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY INCLUDING WITHOUT LIMITATION, THOSE RESULTING FROM THE USE OF THE THIRD PARTY ITEMS, FAILURE OF THE THIRD PARTY ITEMS TO PERFORM, PERSONAL INJURY, DAMAGE TO PROPERTY OR ANY OTHER REASON ARISING IN CONNECTION WITH THE THIRD PARTY ITEM. THIRD PARTY LICENSORS OF THIRD PARTY ITEMS HAVE NO LIABILITY TO DISTRIBUTOR, RESELLER OR ANY END USERS UNDER THIS AGREEMENT.

12. General Provisions

- a. **Publicity.** Customer agrees that in exchange for the pricing provided by Supplier, Distributor and Reseller shall use commercially reasonable efforts to procure from the End User the right for Supplier to develop public communications (including without limitation, press releases, advertisements and customer success stories) which include references to the End User and concerns this Agreement or any related matter. No such

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public communications shall be made without the End User's prior written consent, which consent shall not be unreasonably withheld or delayed.

- b. **Entire Agreement; Governing Terms.** This Agreement (including any SOWs and any Supplier quotations) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and cancels and supersedes any prior understanding and agreements between the party relating thereto. There are no representations, warranties, terms, conditions, undertakings, or collateral agreements, express, implied, statutory or otherwise, between the parties, except as expressly set forth in this Agreement. Any and all additional or different terms or conditions, including, without limitation, terms and conditions contained in purchase orders, requests for quotation, payment remittances, or other Customer business forms shall be void and of no effect. If a conflict arises between the terms and conditions of this Agreement and: (a) a schedule, attachment, exhibit or document attached to or referenced in or by this Agreement, or (b) a SOW, which may contain additional or different terms; the terms and conditions of this Agreement shall prevail to the extent of the inconsistency (except to the extent that a term of a fully-executed SOW expressly amends a term or condition of this Agreement for the purposes of such SOW only). Notwithstanding the foregoing, in the event of any conflict arising between the terms and conditions of this Agreement and the terms and conditions inserted by Supplier into Supplier's quotation, the terms and conditions inserted by Supplier into Supplier's quotation shall prevail to the extent of the inconsistency.
- c. **Segmentation.** The purchase of Products and Services are all separate offers and separate from any other Order. Customer understands that it may purchase Products and Services independently of any other Order. Customer's obligation to pay for Products and Services is not contingent on performance of any other Product or Services.
- d. **Force Majeure.** Neither party shall be deemed to be in default of any provision of this Agreement for any failure in performance (other than payment obligations) resulting from acts or events beyond its reasonable control, including without limitation, acts of God, civil or military authorities, terrorism, fires, strikes, epidemics, quarantine restrictions, flood, earthquakes, riot, war, or delays in transportation. Each party will use its best efforts to anticipate such failures and to devise means to eliminate or minimize them; however, if such failure continues for more than sixty (60) days, either party may terminate the Agreement immediately upon notice.
- e. **Assignment.** Neither party shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. For clarity, a Change of Control shall be deemed an assignment for the purposes of this section. However, notwithstanding the foregoing, Supplier may assign or transfer its rights under this Agreement: (i) to an Affiliate; and/or (ii) to any successor in interest in the event that Supplier merges or consolidates with a

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third party, or a third party purchases all, or substantially all of the assets of Supplier, provided that the assignee or transferee agrees to be bound by this Agreement. Supplier may refuse consent if a requested assignment or transfer is to a competitor to Supplier. This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective successors and permitted assigns. Nothing contained herein, express or implied, is intended to confer upon any person or entity, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

- f. **Independent Contractors.** The relationship of Supplier and Customer established by this Agreement is that of independent contractor and no part of this Agreement shall be construed as creating a joint venture, partnership or other relationship between Supplier and Customer. Nothing in this Agreement shall create in either party any right or authority to incur any obligations on behalf of or to bind in any respect, the other party. Each party acknowledges that this Agreement does not prohibit either party from entering into arrangements with other entities to provide products and services including similar or competitive products or services to those contemplated herein.
- g. **Non-solicitation.** For a period of two (2) years from the date of the Purchase Order, neither party will in connection with any other person, firm, corporation or other entity, directly or indirectly, in any capacity whatsoever including, without limitation, as an employer, employee, director, agent, shareholder or other equity holder, independent contractor, supplier, or otherwise employ, offer employment to or solicit the employment or engagement of or otherwise entice away from the employment of either party an individual who is employed by either party or who has resigned from employment by either party in the then immediately preceding six (6) month period.
- h. **Notices.** Notices under this Agreement shall be in writing and shall be served in person or by facsimile, e-mail, mail or reputable courier service to the addresses stated on the signature page of this Agreement (or to such other address as the receiving party may specify by written notice), and will be deemed effective upon the earlier of: (a) actual delivery, (b) the third (3rd) Business Day after its mailing postage prepaid to the other party if within the same country, (c) the next Business Day if sent within the same country by overnight courier, by facsimile or e-mail, or (d) otherwise ten (10) Business Days after mailing. All notices shall be in the English language as used in Canada.
- i. **Insurance.** Without limiting the Customer's liability under this Agreement, Customer shall, at its own expense, procure and maintain, for the Term of this Agreement, the following insurance coverage:
 - i. Workers' Compensation as required by all applicable laws and regulations, and Employers' Liability Insurance for a minimum limit of five million United States of America dollars (USD 5,000,000) per occurrence or as otherwise may be required by the laws of the country where Customer is located;

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- ii. Comprehensive General Liability Insurance with a limit of five million United States of America dollars (USD 5,000,000) per occurrence and in the annual aggregate including coverage for property damage, broad form property damage, bodily injury (including wrongful death), personal injury, independent contractors, non-owned or hired automobiles, products and completed operations hazards, contractual liability for this Agreement, which policy shall include Supplier as an additional insured with respect to the operations of Customer;
- iii. Where Customer-owned vehicles are used in the performance of services, Motor/Automobile Liability Insurance with combined single limit of five million United States of America dollars (USD 5,000,000) per occurrence for injuries, including accidental death and property damage; and
- iv. Professional Liability Insurance with a minimum limit of five million United States of America dollars (USD 5,000,000). When such Professional Liability Insurance is renewed or replaced, Customer shall make commercially reasonable efforts to cause the policy retroactive date to coincide with, or precede, the Effective Date of this Agreement.

Limits required herein may be made up of any combination of Primary, Umbrella or Excess insurance layers. Upon request by Supplier, Customer shall furnish Supplier with a copy of a certificate confirming the requisite insurance is in place and all related premiums have been paid.

- j. **Governing Law and Forum.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, excluding the United Nations Convention on Contracts for the International Sale of Goods and any conflict of laws rule or principle, foreign or domestic, which might refer such interpretation to the laws of another jurisdiction. Subject to Section 12.k. (Dispute Resolution), each party irrevocably consents and submits to the exclusive jurisdiction of the federal and provincial courts situated in the City of Toronto and waives any objection thereto on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law. The parties waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. All correspondence shall be in the English language.
- k. **Dispute Resolution.** All disputes and questions whatsoever which arise either during the subsistence of this Agreement or afterwards between the parties touching this Agreement or the construction or application thereof or as to any other matter in any way relating to this Agreement, for which a party does not consider has been satisfactorily resolved through the regularly or specially scheduled meetings of the parties, shall be submitted first to the upper management level of the parties. If the parties' upper management are unable to resolve the dispute or question within thirty (30) days, the parties may agree to proceed to arbitration. Notwithstanding the foregoing, a party shall retain the right to immediately seek injunctive or equitable relief.

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Arbitration shall take place in Toronto, Ontario, Canada and be conducted in the English language. The arbitration shall be held in accordance with the Rules of Arbitration of the International Chamber of Commerce (“**Arbitration Centre**”) then in force and shall be heard by three (3) arbitrators. Within fourteen (14) days of a notice served by either party referring the dispute to arbitration, each party shall select one (1) arbitrator. If within fourteen (14) days a party is unable or fails to select an arbitrator then the other party may apply to the chairperson of the of the Arbitration Centre to select an arbitrator on behalf of the party that is unable or fails to select an arbitrator. The two (2) selected arbitrators shall select a third arbitrator within ten (10) days of the last appointed arbitrator. If the two (2) arbitrators selected are unable or fail to agree upon the third arbitrator, then either party may apply to the chairperson of the Arbitration Centre to select the third arbitrator. Notwithstanding any other provision of this Agreement, in the event of claims or disputes regarding: (a) amounts owed a party; or (b) breach or threatened breach of obligations relating to confidentiality, intellectual property, Reverse Engineering or regulatory matters, then without prejudice to the rights of the parties to submit the matter to arbitration, a party shall have the right to seek relief in any court with jurisdiction including, without limitation, for money damages or injunctive relief. Subject to the preceding sentence, each party shall bear one half of the costs associated with the arbitration proceedings. The substantive laws of Ontario will be applied, and the proceedings will be held in the English language in Toronto, Canada. The decision of the arbitral tribunal shall be confidential, final and binding on the parties with no right to appeal.

- I. **Export and Control Restrictions.** Customer acknowledges that all shipments of Products and Third Party Items shall be subject to applicable export control laws and regulations as are in force from time to time. Customer acknowledges that a special license or export permit may be required for any export (or re-export by Distributor or Reseller) of the Products and Third Party Items. Customer agrees that it will not export, re-export, resell, ship, or divert or cause to be exported or re-exported, resold, shipped, or diverted, directly or indirectly, the Products or Third Party Items including, but not limited to, any software, design, schematic, documentation, drawing, firmware, source code, object code, hardware, part, component, machine or any technical data from one country to another country for which any government (or any agency thereof) with competent jurisdiction requires an export license or other governmental approval without first obtaining such license or approval. Customer acknowledges that the Products and Third Party Items may not be used in any nuclear or missile proliferation activity or in any chemical or biological weapons activity. Supplier shall be entitled to reject any Purchase Order: (i) that would require the direct or indirect export of any Product or Third Party Items in contravention of applicable export control laws and regulations; and (ii) when Supplier is not eligible to export the Products or Third Party Items to Customer. Customer shall not sell nor cause any third party to sell Products or Third Party Items without the prior written approval of Supplier. Prior to any reassignment of a designated End User shipment to a different End User, Distributor and Reseller shall: (a) provide

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Supplier with written notice of such reassignment including, without limitation, the identity of the original designed End User, the identity of the proposed End User, the proposed items for reassignment and the reasons for such reassignment; and (b) request Supplier's written approval for such reassignment; and (c) only complete such reassignment after receiving Supplier's written approval to the reassignment. For clarity, Distributor and Reseller shall not reassign any designated End User shipment to a different End User without Supplier's prior written approval. Regardless of any confidentiality obligations herein, Supplier may provide this Section 12.I. (Export and Control Restrictions) to any government authorities as required or requested in relation to the export control of the Products or Third Party Items.

- m. **U.S. Government Restricted Rights.** The Software and Documentation are considered commercial computer software and documentation developed exclusively at private expense and are a "Commercial Item" as defined in 48 C.F.R. § 2.101 (and as it is defined and used in all corresponding agency specific Federal Acquisition Regulation supplements). If the End User is the U.S. Government or any agency or department thereof, the Software and Documentation is only delivered as a Commercial Item subject to the license grant specified in the End User License Agreement and this Agreement. Acquisition of the Product by the U.S. Government or any agency or department thereof shall only be under FAR or DFAR provisions for ACQUISITION OF COMMERCIAL ITEMS and shall not alter the terms and conditions of this Agreement.
- n. **Audit Rights.** Customer shall maintain adequate internal controls and procedures that are reasonably designed to monitor, audit, detect and prevent any breach of this Agreement including but not limited to Sections 2.2 (Business Conduct), 3.(k) (Compliance), 9 (Ownership of Intellectual Property), 10 (Protection of Confidential Information), 12.I (Export Control Restrictions) or 12.m (U.S. Government Restricted Rights). Supplier shall have a general right to audit the use of the Products and Services by Customer to verify compliance with the applicable terms of the licenses and license conditions (including under the End User License Agreement). If Supplier elects to exercise this audit right, such audit shall be conducted at Supplier's expense and shall be subject to the following conditions: (i) Supplier shall give thirty (30) days prior written notice of its intention to conduct the audit; (ii) the audit shall be conducted during the regular business hours of Customer and shall not unreasonably interfere with the normal operations of Customer; and (iii) provided that this Agreement is being complied with by Customer, no more than one audit may be conducted per calendar year by Supplier. If the limits applicable to licenses have been exceeded by Customer, Customer shall obtain the correct number of licenses and pay the additional amounts applicable for such licenses to Supplier. Any refusal to provide requested information and/or cooperate with an audit shall be deemed to be a material breach of this Agreement. Supplier will be responsible for the cost of the audit unless the audit reveals that Customer has under paid fees to Supplier (for example, Customer has underreported its purchases or use of Products or Services) by more than five percent (5%). Customer must pay any under

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paid fees to Supplier and, if the under payment to Supplier is more than five percent (5%), Customer must also reimburse Supplier's costs for undertaking the audit.

- o. **Language.** The official text of this Agreement shall be in the English language and any interpretation or construction of this Agreement shall be based solely on the English-language text. Any other documents delivered or given under this Agreement, including notices, shall be in the English language only.
- p. **Severability.** The provisions of this Agreement shall be deemed severable. If any provision of this Agreement shall be held unenforceable by any court of competent jurisdiction, it shall be severed from this Agreement and the remaining provisions shall remain in full force and effect.
- q. **Amendments.** This Agreement shall not be amended, modified or waived except in writing signed by the parties hereto. No course of dealing or usage of trade by or between the parties shall be deemed to affect any such amendment, modification or waiver. No failure or delay by either party in exercising any right, power, or remedy will operate as a waiver of any such right, power, or remedy.
- r. **Third Party Beneficiary.** The third party supplier or licensor of Third Party Items: (a) has a substantial interest in the Third Party Item; (b) is an intended third party beneficiary of this Agreement with respect to the Third Party Item; and (c) has full rights to bring any action against Distributor, Reseller or any End User, including injunctive action, to enforce the terms of this Agreement or their separate end user terms.
- s. **Survival.** The provisions of Sections 3(g), 3(h), 3(i), 3(j), 3(k), 5, 8.b., 8.d., 8.e., 8.f., 9, 10.e., 11 and 12 of this Agreement shall survive the expiration or termination of this Agreement.
- t. **Termination of End User License Agreement.** Without any liability to Supplier, Supplier may, at Supplier's sole discretion, terminate an End User License Agreement, End User Support Terms or another agreement pursuant to which Supplier directly or indirectly provides a Customer with any assistance, support, maintenance, upgrades or updates to any Products, or any part thereof, if the Customer fails to: (a) pay all fees for the Products and services; or (b) comply with any part of the End User License Agreement (including but not limited to Section 5 (License Conditions), or Section 15 (Compliance with Laws, Export Controls and U.S. Government Restricted Rights), or Section 18 (Code of Conduct) of the End User License Agreement).

----END OF AGREEMENT----